

' This action is properly brought under 42 U.S.C. ' 405(g). The Secretary has admitted that the plaintiff has exhausted her administrative remedies. The case is presented as a request for judicial review by this court pursuant to Local Rule 12, which requires the plaintiff to file an itemized statement of the specific errors upon which she seeks reversal of the Secretary's decision and to complete and file a fact sheet available at the Clerk's Office. Oral argument was held before me on October 4, 1990 pursuant to Local Rule 12(b) requiring the parties to set forth at oral argument their respective positions with citation to relevant statutes, regulations, case authority and page references to the administrative record.

This Social Security Disability appeal raises the question whether the Secretary erred in finding that the plaintiff's impairment did not prevent her from performing her past relevant work prior to December 31, 1973, her date last insured. The plaintiff argues that the Secretary's finding is not supported by substantial evidence in that her impairment, though not yet diagnosed, was present and disabling prior to that date. Consequently, she argues, she did not retain the residual functional capacity to perform her past work as a secretary during her insured period.²

In accordance with the Secretary's sequential evaluation process, 20 C.F.R. ' 404.1520; *Goodermote v. Secretary of Health & Human Servs.*, 690 F.2d 5 (1st Cir. 1982), the Administrative Law Judge found, in relevant part, that the plaintiff had ``Bartter's Syndrome in its early stages of manifestation on or before December 31, 1973, but that she did not have an impairment or combination of impairments listed in, or medically equal to one listed in Appendix 1, Subpart P, Regulations No. 4 at any time on or before December 31, 1973," Finding 3, Record p. 14; that the plaintiff's subjective complaints of pain were not completely credible given the objective medical evidence of record prior to her date last insured, Finding 4, Record p. 14; that the plaintiff retained the residual functional capacity to perform her past work as a secretary prior to the expiration of her insured status, Findings 5-7, Record p. 14; and that the plaintiff was not disabled at any time through December 31, 1973, Finding 8, Record p. 14. The Appeals Council declined to review the decision, Record pp. 3-4, making it the final decision of the Secretary. 20 C.F.R. ' 404.981; *Dupuis v. Secretary of Health & Human Servs.*, 869 F.2d 622, 623 (1st Cir. 1989).

In reviewing the Secretary's decision, the standard is whether the determination made is supported by substantial evidence. 42 U.S.C. ' 405(g); *Lizotte v. Secretary of Health & Human Servs.*,

² This period is from December 15, 1972 through December 31, 1973.

654 F.2d 127, 128 (1st Cir. 1981). In other words, the determination must be supported by such relevant evidence as a reasonable mind might accept as adequate to support the conclusions drawn. *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Rodriguez v. Secretary of Health & Human Servs.*, 647 F.2d 218, 222 (1st Cir. 1981).

At this stage of the evaluative process the burden is on the plaintiff to show that she cannot perform her past relevant work. 20 C.F.R. ' 404.1520; *Goodermote*, 690 F.2d at 6. In determining this issue, the Secretary must make a finding of the plaintiff's residual functional capacity, a finding of the physical and mental demands of past work, and a finding that the plaintiff's residual functional capacity would permit performance of that work. 20 C.F.R. ' 404.1520(e); Social Security Ruling 82-62.

The plaintiff contends that her Bartter's Syndrome³ existed prior to her date last insured and that it was severely disabling, forcing her to terminate her work as a secretary.⁴ The Secretary asserts that the record does not support a disability finding. The Administrative Law Judge correctly noted in his decision that, although the plaintiff now has been diagnosed with Bartter's Syndrome (and may in fact have been afflicted with it prior to 1973), the issue is not simply whether she had it during her insured period, but whether it prevented her from performing her past relevant work. I find

³ Bartter's Syndrome is an hereditary, lifelong kidney disorder which causes the body to lose large quantities of potassium and magnesium. Symptomatology includes fatigue, muscle soreness and memory lapse. Record pp. 10-11.

⁴ One of the additional claims made by the plaintiff at oral argument was that the Administrative Law Judge's Finding 3 and Finding 5 are contradictory. This is not the case. Under the Secretary's sequential evaluation process, it is possible for the Administrative Law Judge to make a ``Step 2" finding of severe impairment and still make a ``Step 4" finding that the plaintiff, though living with a severe impairment, retains the residual functional capacity to perform her past relevant work. 20 C.F.R. ' 404.1520.

substantial evidence in the record to support the Secretary's finding that the plaintiff was able to perform her past relevant work as a secretary prior to her date last insured.

The plaintiff was 22 years old during the period of disability in question. She testified that she graduated from high school in 1969 and attended one semester of college before leaving school to work in a hospital. Record pp. 24-25. She married in 1970 and began work at an insurance company processing claim forms. Record pp. 25-26. She had her first child in 1972, Record p. 26, and stayed home ``for a while" until her financial situation forced her to go back to work. Record p. 28. She eventually returned to full-time work as a secretary in a different insurance company until sometime in 1975. Record p. 32.

During the period of disability at issue here, the plaintiff remembers taking ``Extra Strength Tylenol everyday" for pain. Record pp. 29-30. However, none of the medical records provide substantial evidence of any severe impairment prior to December 31, 1973. The plaintiff's treating physician at the time, Dr. Budd, examined the plaintiff on December 6, 1973 and gave a preliminary diagnosis of an undetermined form of early arthritis. Record pp. 155-56. In that same report, he noted that the plaintiff was lethargic and complained of being chronically tired.

Dr. Budd's remaining clinical notes from 1968 to 1982 indicate that the plaintiff had various illnesses and disabilities, such as tennis elbow, sore muscles, infectious mononucleosis, poison ivy rash, urinary tract infection, ``whip lash" from an auto accident and post-partum depression. The plaintiff submitted a more recent letter from Dr. Budd, dated March 17, 1989, wherein he states that some of the plaintiff's symptoms during the years he treated her ``would certainly fit [Bartter's Syndrome]" and indicates that it was ``reasonable to say that her illness began sometime prior to 1973." Record p. 164.

The plaintiff also submitted a letter dated May 8, 1989 from Dr. James Melby⁵ of The University Hospital in Boston, a specialist in endocrinology, who states that ``it is likely that the condition you have predates 1973 according to the history we have from you last year." Record p. 166.

The record does contain other medical reports, but I find them unhelpful to this claim.⁶ They document a well-established case of Bartter's Syndrome, but not before 1973. The plaintiff did submit hospital records from an emergency room visit in 1971 when she was experiencing severe nausea and a high fever. However, the diagnosis was ``Flu Syndrome with Primary Gastro-Intestinal" disorder. Record pp. 139-41. Again, while these symptoms may have been associated with Bartter's Syndrome at that time, the evidence does not establish that the plaintiff was so disabled from her illness(es) that she was unable to work.

⁵ Dr. Melby was one of the plaintiff's treating physicians subsequent to her diagnosis of Bartter's Syndrome, that diagnosis having been made sometime in 1984 or 1985. Record pp. 97, 105.

⁶ See Dr. Baum, 1-16-86, Record pp. 97-99; Dr. Melby, 2-16-88, Record pp. 105-07; Dr. Spratt, 4-22-88, Record pp. 119-21; Dr. Parker, 6-29-88, Record pp. 122-24. A ``recollection report" from the plaintiff's high school nurse indicated some symptoms associated with Bartter's Syndrome, but no diagnosis was made at that time and her recollections contribute little to the issue of impairment. Record pp. 148-50.

A residual functional capacity assessment by Dr. Hall in August 1988 indicates that, while the plaintiff is now severely limited by Bartter's Syndrome, there is insufficient evidence to establish limitations prior to December 31, 1973. Record p. 96. Given this lack of evidence, I find that the Administrative Law Judge reasonably inferred that because (a) the plaintiff was working as a secretary until 1972 and returned to work in 1974 and (b) was able to bear and care for a child during her period of disability⁷, she retained the residual functional capacity to perform her past relevant work as a secretary during that time. Bartter's Syndrome, being an hereditary disease, was most likely present in the plaintiff's body in some form during her period of disability. However, the plaintiff did not carry her burden of showing that it manifested itself to such a degree that she was unable to work as a secretary.⁸

It is admittedly difficult to piece together the plaintiff's true condition more than 15 years ago, but the medical evidence of record simply does not establish that the plaintiff was so severely impaired from Bartter's Syndrome (or any other impairment) prior to December 31, 1973 that she could not

⁷ At oral argument the plaintiff asserted that the Administrative Law Judge was biased in concluding that she must have been able to work if she was able to raise a child. I find this claim to be without merit. It is acceptable for the Administrative Law Judge to consider, among other things, a plaintiff's daily functioning when making a residual functional capacity assessment as to walking, standing, lifting, carrying, pushing, pulling, reaching, handling, etc. 20 C.F.R. ' 404.1545. Since Dr. Hall found insufficient evidence to make a residual functional capacity assessment for the period prior to December 31, 1973, the Administrative Law Judge was forced to consider whatever evidence he had before him.

⁸ The plaintiff refers to the Administrative Law Judge's conclusion as "speculative." However, it is the plaintiff's burden to provide evidence of disability. The record simply does not show sufficient evidence of a disabling condition to sustain that burden. The plaintiff argued before me that she was not allowed to develop her case at the administrative hearing. I find that this claim is also without merit. The transcript indicates that the Administrative Law Judge gave the plaintiff's representative a full opportunity to present his case. Record p. 18 (Administrative Law Judge accepts additional evidence), Record p. 20 (allows for opening statement), Record p. 31 (representative examines plaintiff).

return to her past work as a secretary. I find that the Secretary's decision is supported by substantial evidence on the existing record.

Accordingly, I recommend that the Secretary's decision be **AFFIRMED**.

NOTICE

A party may file objections to those specified portions of a magistrate's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. ' 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated at Portland, Maine this 24th day of October, 1990.

*David M. Cohen
United States Magistrate*